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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,395	07/03/2003	William M. Appling	ANGIO P-32/500622.20045	4468
7590	04/19/2005		EXAMINER FARAH, AHMED M	
Harry K. Ahn, Esq. Reed Smith LLP 599 Lexington Avenue New York, NY 10022			ART UNIT 3739	PAPER NUMBER

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,395

Applicant(s)

APPLING ET AL.

Examiner

Ahmed M Farah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 20 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-34 are again rejected under 35 U.S.C. 102(b) as being anticipated by Mueller U.S. Patent No. 5,725,521.

Mueller discloses a transmyocardial revascularization apparatus and methods of use, the apparatus comprising: a catheter device comprising at least one optical fiber **54** (see Figs. 3 and 4); a first tube, **58, 106**, surrounding the optical fiber, and second tube, **50,102**, surrounding the first tube (see Figs. 3, 5A, respectively); and a spacer **70** arranged near the distal end of the optical fiber and operable to position the distal end of said optical fiber away from the blood vessel as presently claimed (see Fig. 4).

As to claims 4, 5, 7, 10, 11, and 13-16, the spacer has a plurality of ribs, the ribs extending in a radial direction into a deployed state as claimed (see Fig. 6B).

As to claims 17 and 18, the spacer includes a balloon positioned near the distal end of the optical fiber (see Fig. 6A).

3. Claims 1-3, 6, 8, 9, 12 and 17-34 are again rejected under 35 U.S.C. 102(b) as being anticipated by Kittrell et al. U.S. Patent No. 5,693,043.

Kittrell et al disclose an endovascular laser treatment device and methods of use, the device comprising: a plurality of optical fibers **20**; a spacer **176** arranged near the distal end of the optical fibers; a first tube adapted to receive the optical fibers; and a second tube surrounding the first tube, the spacer being arranged near the distal portion of the second tube as presently claimed (see Figs. 11A, 18, and 24).

As to claims 17 and 18, the spacer includes a balloon positioned near the distal end of the optical fiber (see Fig. 18).

Response to Arguments

Applicant's arguments filed on January 20, 2005, have been fully considered but they are not persuasive. The applicant argues that neither Mueller nor Kittrell et al. disclose a spacer operable to position/keep the distal end of the optical fiber away from the walls of a blood vessel. He further argues that, in contrary to the instant claims, the devices of Mueller used to create channels, and the device of Kittrell et al. is used to open an occluded blood vessel. In addition, He argues that neither of the references closes a blood vessel to prevent blood flow.

In response to these arguments, the examiner agrees with the applicant that the device Mueller is used to create channels; and the device of Kittrell et al. is used to open an obstructed blood vessel. However, as shown in Figs. 5-6B of Mueller, the spacer is operable to keep the optical fiber away from the walls of a blood vessel if the catheter is inserted into a blood vessel. Similarly, as shown in Fig. 17 of Kittrell et al. the

balloon member 176 is operable to position/keep the distal end of the optical fiber away from the walls of the blood vessel if the catheter device is inserted in a blood vessel.

As to the argument that neither of the references prevents blood flow, the applicant's claims do not particularly recite that the spacer prevents blood flow.

Therefore, this argument has not been considered.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah
Primary Examiner
Art Unit 3739



April 17, 2005.